

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

JEANNIE BROWNING, as  
Administratrix for John Browning,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-cv-00899

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

**MEMORANDUM OPINION AND ORDER**


This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the plaintiff's motion for remand, deny as moot the plaintiff's original motion for remand, grant the defendant's brief in opposition to remand (construed as the defendant's motion for judgment on the pleadings), and affirm the final decision of the Commissioner of the Social Security Administration. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge. The court **DENIES** the plaintiff's motion for remand [Docket 15], **DENIES AS MOOT** the plaintiff's original motion for remand [Docket 12], **GRANTS** the defendant's brief

in opposition to remand (construed as the defendant's motion for judgment on the pleadings) [Docket 13], and **AFFIRMS** the final decision of the Commissioner.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented parties.

ENTER: July 11, 2005



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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE